

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 630 OF 2004

Prabhakar Damodar Gosavi & Anr. ..Petitioners.

Versus

The Deputy Collector and The Competent

Authority, Ulhasnagar Urban

Agglomeration, Thane & 2 ors. ..Respondents.

Mr. P.K.Dhakephalkar i/by Sandesh Deshpande for the
Petitioners.

Mr. A.H. Palekar, AGP for the Respondents Nos. 1 to 3.

CORAM : S. A. BOBDE, J.

DATED : 18TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr. Palekar, learned AGP waives service of
rule for the respondents 1 to 3.

Heard by consent.

2. The petitioners have sought a writ order for direction for quashing and setting aside the Clause No.6 of the order of exemption dated 18th June, 1998 modified on 12th December, 2002 under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976. The petitioner claims to be a purchaser of certain lands from one Mr.Purushottam Gopal Apte, who appears to have held land beyond the ceiling limit prescribed by the said Act.

3. It appears that the Government of Maharashtra by order dated 18th June, 1998 at Exh. I exempted the aforesaid land holder Purushottam Gopal Apte under section 20 and imposed certain conditions thereon. One of the conditions, viz., clause 6 reads as follows:-

"6. Irrespective of anything mentioned in the present exemption order, in case the person i.e. landholder in whose favour the said exemption order is passed wants to transfer the said exempted land (alongwith present construction thereon) in favour of any other person by way of sale, mortgage, donate, lease or by any other way, in such a case before

transferring the land, prior permission for such intended transfer is necessary by making application with necessary details to the Government. After the receipt of such Application from landholder and after conducting necessary inquiry into the matter, the Government may grant the necessary permission as per norms and conditions that it may deem fit. The order will include the condition regarding payment by the Transferor to the government, the difference in the market price of the exempted land and the price fixed under the Urban Land Ceiling Act. At the time of the transfer, the price fixed by the Government as the market price and the price fixed under the U.L.C.Act and rules made thereunder, will be final."

4. Subsequently, on 12th of December, 2002 the Government of Maharashtra issued a corrigendum. The said corrigendum reads as follows :-

"Said condition will include the condition that person transferring the said

land shall pay the difference price between the market value of the said exempted land and price as per the Urban Land Ceiling and Regulation"

instead of this following to be read

" Person transferring the land will pay the 50% of the difference price between the market price decided by the Government in respect of the exempted land and the price paid by the landholder to the government plus the amount spent by the landholder for the development of the said land", will be included in the condition."

5. The learned counsel for the petitioners contended that the aforesaid clause 6 is onerous and the amount should not be demanded by the government from the petitioners. I do not see, on a bare reading of the said clause, how the petitioners are affected in any manner. Clause 6 is applicable to the transferor. In an earlier clause, Prabhakar Damodar Gosavi, the petitioner No.1, is shown as the person

who has purchased the land from the land holder Mr. P.G.Apte. More over there is intrinsic evidence in clause 6 itself, which suggest that word ""Transferor" refers to Purushottam Gopal Apte in view of preceding recital to the effect that the "landholder in whose favour the said exemption order is passed wants to transfer the said exempted land (alongwith the present construction thereon) in favour of any other person by way of sale, mortgage, donate, lease or by any other way, in such a case before transferring the land, prior permission for such intended transfer is necessary by making application with necessary details to the Government".

6. Clearly, on a plain construction of the exemption order, the liability to pay the amounts referred to in clause 6 is not that of the petitioners namely, Prabhakar Damodhar Gosavi and Prakash Damodar Gosavi. I do not see how the petitioners are affected or liable under said clause 6 of the said exemption order.

7. Petition is, therefore, dismissed.

DT.18.08.05

(S.A.BOBDE, J)